

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0330P

Withholding Tax

For the month of December 2005

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment and filing of a monthly withholding tax return for the month of December 2005. The taxpayer is an out-of-state company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the taxpayer did not act with willful negligence in that the employee responsible for preparing the return had health problems.

The Department states the taxpayer is responsible for the actions of an employee even if the employee has health problems. Therefore, the penalty protest would be denied on this issue.

The taxpayer has a bad compliance record. The taxpayer has had eleven liabilities resulting from the taxpayer's negligence. Also, the taxpayer has had one abatement in the amount of \$997.16. The Department feels the taxpayer's compliance record is a negative factor in the abatement of penalty.

The regulation which references negligence is 45 IAC 15-11-2(b) which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.